

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1928 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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VALIMAHMAD USMANBHAI MIYANA

Versus

DISTRICT MAGISTRATE

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Appearance:

Ms D.R.Kachhavah, learned Advocate for the petitioner.

Mr.U.R.Bhatt, learned AGP, for the respondents

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CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 16/07/96

ORAL JUDGEMENT

By this petition under Article 226 of the Constitution of India, Valimohmad Usmanbhai Miyana has challenged the legality and validity of the order of his detention dated 22-2-1996 passed by the District Magistrate, Ahmedabad in exercise of the powers conferred on him under sub-section (1) of section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985.

Considering the 12 cases registered against the detenu under the provisions of the Bombay Prohibition Act and the statements of ten witnesses , whose identity has not been disclosed to the detenu by the detaining authority invoking the provisions of section 9(2) of the said Act, the detaining authority has recorded a finding that the detenu is a "Bootlegger" within the meaning of section 2 (b) of the said Act and with a view to preventing him from acting in any manner prejudicial to the maintenance of public order, it was necessary to pass the order of detention against the detenu and, therefore, the impugned order is passed, which is under challenge in this petition.

Since this petition , can be disposed of on the short ground of the supply of illegible copies of the documents to the detenu resulting in violation of his fundamental right guaranteed under Article 22 (5) of the Constitution of India to make an effective representation to the authorities , it is not necessary to refer to and deal with the other contentions raised by Ms.Kachhavah. She has invited my attention to page 91 ( xerox copy of the bail bond executed by the detenu ) and page 107 (xerox copy of the order of bail passed by the trial Court). Perusing these copies, I am of the opinion that most of the contents thereof are not legible. Mr.U.R.Bhatt, learned Assistant Government Pleader, appearing for the respondents, has also not been able to dispute this position. In view of this, this Court is left with no option but to hold that by supplying some of the illegible documents to the detenu, the detaining authority has denied the right guaranteed to the detenu under Article 22 (5) of the Constitution of India of making an effective representation against his detention. This has vitiated the continued detention of the detenu.

In the result, this petition is allowed. The impugned order of detention dated 22-2-96 is quashed and set aside. The detenu Valimohmad Usmanbhai Miyana is directed to be set at liberty forthwith if his detention is not required for any other purpose. Rule is made absolute accordingly with no order as to costs.

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